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September 29, 1997

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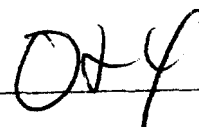
Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**Re: Freedom Of Information Act Request of GCI
CC Docket No. 96-45**

Dear Mr. Fishel:

On July 9, 1997, the Commission ordered the Municipality of Anchorage d/b/a Anchorage Telephone Utility ("ATU") to submit certain proprietary financial and business information to assist the Commission in developing a forward-looking cost model for providing universal service in the Anchorage, Alaska area. On August 15, 1997, ATU submitted the information requested by the Commission, which includes commercially sensitive information, such as cost and expense data, outside plant information, infrastructure deployment, investment data and vendor contracts. Pursuant to Sections 0.457 and 0.459 of the Commission's rules, ATU requested that the information be treated on a confidential basis.

General Communication, Inc., ("GCI") has submitted a Freedom of Information Act ("FOIA") request seeking disclosure of the business and financial data ATU provided to the Commission. GCI is an incumbent interexchange carrier in Alaska with approximately 50 percent of the Alaska interexchange market. GCI is also the monopoly cable television provider in Anchorage. ATU has entered into an agreement with GCI, pursuant to Section 251 of the Communications Act, to provide interconnection, unbundled elements, and wholesale local exchange service. That agreement has been approved by the Alaska Public Utilities Commission ("APUC"). GCI is completing its deployment of local exchange facilities, and has begun marketing and offering local exchange service in Anchorage.



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GCI's motivation for filing its FOIA request is obvious -- GCI seeks confidential, proprietary cost and financial information of ATU, its local exchange competitor, for competitive advantage. GCI's contention that it is entitled to review ATU's proprietary information to ensure the accuracy of the Commission's forward looking cost model is disingenuous. The Commission intends to use ATU's confidential business and financial information to determine the cost of providing local exchange service in Anchorage, not Alaska state-wide. ATU currently receives no high cost Universal Service Fund ("USF") assistance. The APUC recently decided not to adopt its own cost model for Anchorage because it found it highly speculative that Anchorage would be eligible for high cost support. GCI concurred with the APUC's decision, and acknowledged that "[GCI does not] really anticipate that there'll be [USF] support flowing to Anchorage."^{1/} GCI's newly contrived claim that it must have access to ATU's proprietary financial data to ensure the accuracy of USF payments to Anchorage LECs is simply a pretense to obtain sensitive cost and financial data of GCI's competitor. GCI is attempting to use the Commission's administrative precesses to beat ATU in the local exchange market.

The material that ATU submitted falls squarely within Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and accordingly should not be disclosed to GCI. Exemption 4 shields information which is (1) commercial or financial in nature; (2) obtained from a person outside the government; and (3) privileged or confidential. See Washington Post Co. v. U.S. Department of Health and Human Services, 690 F.2d 252 (D.C. Cir. 1982). First, the information submitted by ATU is clearly commercial or financial information. Second, the information was obviously submitted by a person outside the federal government -- ATU. With respect to the third element, commercial or financial information is considered to be "confidential" if disclosure of the information is likely "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992) (citing National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974)). The information submitted by ATU clearly satisfies this definition of "confidential," as demonstrated in detail below.

^{1/} Statement of Jimmy Jackson, Regulatory Attorney for GCI, APUC Public Meeting (August 13, 1997) (Attachment A). Mr. Jackson was recently named to the Universal Service Administrative Company Board of Directors. See Chairman Hundt Names Members To Universal Service Boards, News Release (September 9, 1997).

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The Alaska Public Utilities Commission has certified both incumbent interexchange carriers -- AT&T and GCI, whose resources far exceed those of ATU -- to provide local exchange service in Anchorage. ATU has entered into interconnection agreements pursuant to Section 251 of the Communications Act with both GCI and AT&T. GCI has deployed its own network and has begun marketing and offering facilities-based local exchange service in Anchorage. There can be no question that ATU currently is subject to competition with GCI and AT&T in the provision of local exchange services. The disclosure of the information submitted by ATU would be used by GCI specifically to damage ATU's position in the local exchange market.

If ATU's cost information is made public, GCI would know exactly how to price its services to minimize ATU's profits. In addition, GCI would be able to determine which services it can provide on a more cost-efficient basis, and target those services. ATU's cost information would also assist GCI in determining whether to deploy facilities or alternatively, to purchase services or facilities from ATU. If GCI is given access to ATU's cost data, GCI would be able to use that information against ATU in any future negotiations for interconnection, resale or access to unbundled network elements pursuant to Section 251 of the Communications Act.

The Commission has previously found that cost and pricing information is confidential and should not be disclosed to the public. See In re Pan American Satellite Corporation, FOIA Control Nos. 85-219, 86-38, 86-41 (May 21, 1986). The Common Carrier Bureau has also recognized that local exchange cost information could be used by competitors to harm a LEC's competitive position. The Bureau determined that:

such information could be used by competitors to devise strategies to introduce new weaknesses to the competitors' benefit, or exploit weaknesses in the existing [LEC's] operation. Using information obtained from [the LEC] data as a model, a competitor would be provided a "heads-up" for use in negotiating their own rates or agreements.^{2/}

More specific harms that would result from release of the data supplied by ATU are addressed below. These supplement the explanations provided in the attached Request for Confidential Treatment submitted by ATU on August 15, 1997 (Attachment B).

^{2/} Letter from Kathleen M.H. Wallman, Common Carrier Bureau, to John L. McGrew, Willkie, Farr & Gallagher, dated August 11, 1995 at p. 3, and attached to DA 95-1788.

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Data Request Item 1: This information consists of the number of switching loops, both revenue producing and non-revenue producing, per central office and by class of customer (such as residential, single line business and multi-line business). Disclosure of this information will give ATU's competitors a competitive advantage by providing insight and direction for targeting markets for advertising and penetration purposes. For instance, competitors will be able to identify customers by location per central office and by residential and business class of service and will then be able to direct their marketing efforts toward more densely populated and multi-line business locations.

Data Request Item 3: This information consists of subscriber line usage studies and contains data on the minutes of use per wire center. This information, particularly when combined with subscriber loop information from Item 1, will provide competitors of ATU with information concerning concentrations of high access usage traffic by central office. Competitors will be able to determine if there are areas of high-usage subscribers by wire center, and will be able to direct their marketing efforts towards those areas.

Data Request Item 6: Installation cost data for installation of cable facilities is also competitively sensitive. This information provides a very detailed breakdown of ATU's costs by specific item and location. Using this information, a competitor could determine, for example, the extent and routing of ATU's facilities which are available or being utilized to service particular customers. This provides competitors with information on the feasibility and profitability of by-passing ATU's existing facilities with their own facilities.

Data Request Item 7: Subscriber line fill information, by central office, especially when added to subscriber loop information from Item 1, will provide competitors of ATU with data regarding high and low concentrations of access to each central office. Competitors will be able to direct their marketing and facilities investment efforts towards those areas.

Data Request Item 9: This information consists of the number of ATU's multi-line customers, which ATU's competitors will be able to use to target multi-line customers. By tracking the number of multi-line customers they have converted, competitors will know approximately what percentage of ATU's class of multi-line customers they have obtained and how many remain. As ATU will not have access to similar market share data of its competitors, this information is competitively sensitive. Also, ATU's competitors will know where multi-line customers are concentrated, and will target those areas.

Data Request Item 10: This item requested information regarding the costs of installing poles. ATU does not generally install its own poles. To assist the Commission in

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obtaining relevant information for its universal service forward-looking cost model, ATU submitted pole installation data obtained from another utility operating in Anchorage. ATU has no authority to authorize disclosure of this information. If the Commission denies ATU's request that this information not be disclosed to the public, ATU requests that the Commission return this information to ATU. The Commission may then request the other utility to provide this information directly to the Commission on a voluntary basis. That utility would then have the opportunity to request that its information not be made publicly available.

Data Request Item 11: This information consists of detailed continuing property records for USOA Account 2212. This information, particularly when combined with the data provided in response to Item 9, will give competitors of ATU the ability to calculate the costs of serving particular areas. Competitors will then be able to determine the low cost areas in which to install their own facilities and high cost areas in which to buy unbundled elements from ATU. Giving competitors the tools to make this analysis could, among other problems, seriously harm ATU's opportunity to recover its costs in higher cost areas as ATU would lose customers, traffic and the revenues associated with providing service in the lower cost areas.

Data Request Item 13 and 21: This information consists of negotiated contracts with third party vendors for switches (Item 13) and digital lines (Item 21). Disclosure of these contracts, which include negotiated terms such as price, will harm the vendors and ATU. In particular, the vendors' ability to negotiate prices with other customers will be harmed. Also, by disclosing the prices paid by ATU under these contracts, ATU's ability to negotiate lower prices with other vendors will be harmed.

Moreover, ATU's vendors specifically requested that ATU seek confidential treatment of this information in accordance with the confidentiality provisions of contracts. If these vendor contracts are disclosed to the public, ATU's ability to negotiate future contracts with these and other vendors will be impaired. Vendors will be wary of doing business with ATU because of concerns that any agreements with ATU may be made public. If the Commission denies ATU's request for confidential treatment of the vendor contracts, ATU requests that the Commission return this information to ATU. The Commission may then request that the vendors provide this information on a voluntary basis.

Data Request Item 14: This data consists of Digital Loop Carrier ("DLC") investment providing the average DLC cost per working line to customers. Combined with DLC location data, this information provides competitors with costing information sufficient to determine whether it may or may not be profitable to install their own facilities.

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Data Request Item 15: This item requested information regarding drop lines. ATU is competing with GCI for facilities-based local loop customers. GCI owns the local cable company that delivers cable to almost 75% of the homes in Anchorage. Information regarding the number of drops ATU is installing could be used by GCI as a competitive marketing tool to compare the "facilities" and quality of one transmission to the "facilities" and quality of transmission of another type of transport (e.g., coaxial cable). If competitors know the facilities ATU is installing, they can modify their own investment strategy to give themselves a marketing edge. Especially since ATU does not have comparative information about its competitors, this puts ATU at a competitive disadvantage.

Data Request Item 17: Riser cable is now a de-regulated service offering that competes with any electrical contractor in Anchorage. Identifying ATU's installation practices and investment in riser cable may encourage competitors to solicit ATU's customers. In addition, anything that is not riser cable is intra-building investment. This information will identify for ATU's competitors intra-building investment that ATU's competitors may want to target.

Data Request Item 18: The revenue information requested in this item will allow competitors of ATU to calculate average revenue figures, per customer, to assist in determining ATU's average revenue per line. This information will give competitors insight into ATU's customer profile, which is competitively sensitive information.

* * * * *

That ATU will suffer competitive harm, should the Commission release the above information to GCI, is "virtually axiomatic." Indeed, the information requested by the Commission is very similar to the type of information requested by the Government in National Parks and Conservation Ass'n v. Kleppe.^{3/} In that case, concessionaires of certain national parks were required to submit detailed financial records, including cost information. In denying the request for access to this information by the concessionaires' competitors, the D.C. Circuit determined that:

Viewing the District court's findings that these five concessionaires face competition in light of the extremely detailed and comprehensive nature of the financial records requested by the Association, we consider the likelihood of substantial harm to their competitive positions to be virtually axiomatic. Disclosure would provide competitors with valuable insights

^{3/} National Parks and Conservation Ass'n v. Kleppe, 547 F.2d 673 (D.C. Cir 1976).

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into the operational strengths and weaknesses of a concessioner, while the non-concessionaires could continue in the customary manner of "playing their cards close to their chest." Selective pricing, market concentration, expansion plans and possible takeover bids would be facilitated by knowledge of the financial information the Association seeks. Suppliers, contractors, labor unions and creditors, too, could use such information to bargain for higher prices, wages or interest rates, while the concessionaires' unregulated competitors would not be similarly exposed.^{4/}

If the Commission releases the information provided by ATU to GCI, ATU would be placed at a similar competitive disadvantage.

GCI justifies its access to ATU's proprietary information by maintaining that GCI has a financial interest in the Commission's USF model for Anchorage. When in fact, as GCI expressly acknowledged to the APUC, it is unlikely that any local exchange carriers in Anchorage will actually receive USF payments. Further, the data submitted by ATU has no implications or relevance for USF payments anywhere outside of Anchorage. GCI's only purpose for filing its FOIA request is to obtain confidential cost and business data to use to compete against ATU.

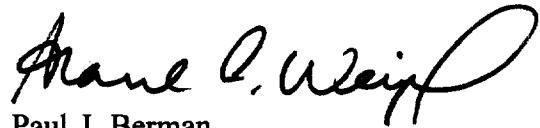
Release of ATU's confidential information would provide GCI with a significant competitive advantage over ATU. The Commission must allow competitors to compete on a level playing field. Confidential, proprietary information should remain confidential for all competitors in the local exchange market. Accordingly, the Commission should not disclose to GCI or any other person or entity the confidential information submitted by ATU.

^{4/} Id. at 684.

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Please direct any further inquiries concerning GCI's FOIA request or this response to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alane C. Weixel". The signature is fluid and cursive, with a large loop at the end.

Paul J. Berman
Alane C. Weixel

Attorneys for Anchorage Telephone
Utility

Attachment

cc: Ms. Natalie Wales
Mr. Charles Keller
Kathy L. Shobert

ATTACHMENT A

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STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
Alyce A. Hanley
Dwight D. Ornquist
Tim Cook
James M. Posey

ALASKA PUBLIC UTILITIES COMMISSION
1016 WEST SIXTH AVENUE, SUITE 305
ANCHORAGE, ALASKA 99501

PUBLIC MEETING

August 13, 1997
9:00 o'clock a.m.

R. R. R. COURT REPORTERS

810 N STREET
277-0572/Fax 274-8982

1007 WEST THIRD AVENUE
272-7515

ANCHORAGE, ALASKA 99501

1 COMMISSIONER COOK: I guess I just want to be sure
2 we're interpreting the supposed ambivalence correctly. It
3 looks like we've got people from at least three or four of the
4 entities we're talking about. Are we misinterpreting the
5 ambivalence?

* 6 MR. JACKSON: I think our ambivalence is largely
7 similar to what Chairman Cotten just said is we don't really
8 anticipate that there'll be support flowing to Anchorage and so
9 that it is probably not going to matter a whole lot what
10 happens with this study.

11 There is certainly some questions about what all this
12 means. I think Lori very candidly has said that you can't tell
13 exactly what they mean, but -- and we share that lack of total
14 understanding, but, again, the bottom line is don't really
15 anticipate that it will result in support flowing to Anchorage.

16 COMMISSIONER COOK: Okay.

17 COMMISSIONER ORNQVIST: You might want to identify
18 yourself for the record.

* 19 MR. JACKSON: Thank you, Commissioner. My name is
20 Jimmy Jackson and I represent GCI.

21 MR. VASCONI: My name is Mark Vasconi and I represent
22 AT&T Alascom. Our position is really one more that we believe
23 that forward looking economic cost models generically are a
24 much better barometer of costs in general. And that there is a
25 model that the FCC has been exploring that both MCI and AT&T

R & R COURT REPORTERS

810 N STREET
277-0572/Fax 274-8962

1007 WEST THIRD AVENUE
272-7515

ANCHORAGE, ALASKA 99501

ATTACHMENT B

DESIGNATION OF CONFIDENTIAL INFORMATION

I hereby certify that the information designated as confidential in the attached response(s) to the Universal Service Data Request is protected by Anchorage Telephone Utility as confidential or financial information:

SIGNATURE: _____

Ted Moninski

TITLE: Director, Regulatory Affairs

ADDRESS: 600 Telephone Avenue, M/S 8

Anchorage, Alaska 99503

TELEPHONE: (907) 564-1230

FAX: (907) 563-4361

On a separate sheet of paper, please list the responses designated confidential, by question number, a statement of the reasons for withholding the information from the public record, and the facts on which those reasons are based.

Approved by OMB

3060-0781

Expires 1/31/98

Burden hour per respondent: 488 average.

1. Loops - This information is competitively sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska.¹ Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for targeting markets for penetration purposes. For instance, competitors would be able to identify customers by location per central office and by residential and business class of service. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.
3. Subscriber line usage studies - This information is competitively sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska.² Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for targeting markets for penetration purposes. For instance, competitors would be able to identify concentrations of traffic per central office. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's traffic volume and patterns, without having to disclose their own information to provide their equivalent service offering.
6. Installation cost data for cable facilities - Although aggregate cost data for cable facilities has been filed with both the state and federal commissions, the level of detailed information included herein has not. The level of detailed provided herein discloses competitively sensitive information about ATU's specific costs to install cable facilities. If made public, it could negatively impact ATU's position in other proceedings.

¹ GCI Vision Statement; R. Duncan, President and CEO, 08/05/97, <http://www.gci.com/about/vision.htm>.

² GCI Vision Statement; R. Duncan, President and CEO, 08/05/97, <http://www.gci.com/about/vision.htm>.

7. Subscriber utilization studies - ATU and the Alaska Public Utilities Commission are involved in a court case³ that includes a dispute regarding the cable fill investments of ATU. Since this information provides current fill factor conditions that may influence the court proceeding, it is considered confidential.
9. Multi-line residential customers - This information is competitively sensitive. ATU must compete in the market place along side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska⁴. Providing this information publicly would give ATU's competitors a competitive advantage. For instance, competitors would be able to identify customer location by central office and class of service. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.
10. Poles - ATU does not normally install poles. Therefore, ATU requested pole installation information from the local electric company. As a result, the estimate may not represent an accurate cost for ATU to install a pole and could be incorrectly applied to ATU's cost structure in other proceedings.
11. Detailed Continuing Property Records - This information is competitively sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska.⁵ Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for targeting markets for penetration purposes. For instance, competitors would be able to identify customer concentrations per central office.

³ APUC Docket No. U-93-84; Superior Court for the State of Alaska Case Nos. 3AN-94-593 Civ., 3AN-95-376 Civ., and 3AN-95-7413, Consolidated.

⁴ GCI Vision Statement; R. Duncan, President and CEO, 08/05/97. <http://www.gci.com/about/vision.htm>.

⁵ GCI Vision Statement; R. Duncan, President and CEO, 08/05/97. <http://www.gci.com/about/vision.htm>.

The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.

13. Contracts with switching manufacturers - The contracts with Pairgain and Northern Telecom, Inc. ("NTI") are considered confidential as these vendors provide competitive products and services. Since contracts are negotiated and terms and conditions vary among vendor customers, Pairgain and NTI have requested their contracting information be kept confidential so as to not interfere with the negotiation process among other customers. For example, the sales agreement with NTI requires ATU to treat and protect all information received from NTI or its suppliers as confidential information⁶.
14. Digital line carrier devices - Installation charges to install the DLCs are allocated to the material costs upon completion of the installation workorder. Therefore, ATU had to allocate the capitalized DLC cost between material costs and installation costs based on the relationship from the entire workorder. As a result, the estimate may not represent an accurate cost for the materials and installation costs therefore, could be incorrectly applied to ATU's cost structure in other proceedings.
15. Drop Lines for Residential Customers - ATU and the Alaska Public Utilities Commission are involved in a court case⁷ that includes a dispute regarding the cable fill investments of ATU. Since this information provides current fill factor conditions that may influence the court proceeding, it is considered confidential.
17. Riser Cable - Riser cable and intrabuilding cable are combined in the same account. Therefore, ATU had to allocate the amount of investment that represents riser cable installed prior to de-regulation in 1986 by assuming that all cable installed prior to that date, still in the account, represents riser cable. All investment installed after that date is not considered riser cable, but intrabuilding. As a result, the estimate may not represent an accurate cost for riser cable in regulated plant therefore, could be incorrectly applied to ATU's cost structure in other proceedings.
18. Residential, single-line business and multi-line business customers - This information is competitively sensitive. ATU must compete in the market place along-side other alternative service providers who today already offer services similar to the ones ATU offers in the

⁶ Section 7.1.1., NTI/ATU Sales Agreement, 10/05/89.

⁷ APUC Docket No. U-93-84; Superior Court for the State of Alaska Case Nos. 3AN-94-593 Civ., 3AN-95-376 Civ., and 3AN-95-7413, Consolidated.

Anchorage market. The Alaska Public Utilities Commission ("APUC") has recently issued two Certificates of Public Convenience and Necessity, one to GCI Communications, Inc. ("GCI") and the other to AT&T Alascom, to provide local telecommunications service in Anchorage. Both carriers are significantly larger than ATU. GCI also owns the state's three leading cable television companies, with a wired broadband network passing 74 percent of the homes in Alaska.⁸ Providing this information publicly would give ATU's competitors a competitive advantage by providing insight and direction for pricing and marketing purposes. The disclosure of this information would reveal competitively sensitive information to competitors about ATU's services, without having to disclose their own information to provide their equivalent service offering.

21. Contracts with digital line carrier manufacturers - The contract with Fujitsu Network Communications, Inc. ("Fujitsu") is considered confidential as this vendor provides competitive products and services. Since contracts are negotiated and terms and conditions vary among vendor customers, Fujitsu has requested its costing information be kept confidential so as to not interfere with the negotiation process it has with other customers.

⁸ GCI Vision Statement; R. Duncan, President and CEO, 08/05/97, <http://www.gci.com/about/vision.htm>.